

**Callahan, Beth****1305**

**From:** Ryan, Jonathan [jonathan.ryan@stantec.com]  
**Sent:** Monday, August 03, 2009 8:15 AM  
**To:** Callahan, Beth  
**Subject:** RHW -- Clinton Bradbury option  
**Attachments:** Signed Bradbury Option.pdf

Beth -

Please find an executed option agreement between Record Hill Wind LLC and Clinton Bradbury, the present owner of the abutting property northwest of the Haseltine property. The generator lead corridor will cross the corner of his property immediately before reaching the proposed location of the project collector station.

Please call/email with any questions.

Jon

**Jonathan Ryan**  
Project Manager  
Stantec Consulting  
30 Park Drive  
Topsham ME 04086  
Ph: (207) 729-1199  
Fx: (207) 729-2715  
Cell: (207) 841-5095  
jonathan.ryan@stantec.com  
**stantec.com**

The content of this email is the confidential property of Stantec and should not be copied, modified, retransmitted, or used for any purpose except with Stantec's written authorization. If you are not the intended recipient, please delete all copies and notify us immediately.



Please consider the environment before printing this email.

## OPTION TO ACQUIRE EASEMENT

This Agreement is dated \_\_\_\_\_, 2009, by and among **Clinton G. Bradbury** (the "GRANTOR"), of 15 Serenity Lane, Peru, Maine 04290 and **Record Hill Wind LLC**, a Delaware limited liability company with a mailing address at c/o Wagner Wind Energy I, LLC 150 Orford Road, P.O. Box 160, Lyme NH 03768 (the "GRANTEE").

In consideration of the payments to be made and the covenants, conditions and obligations to be observed and performed by Grantee set forth in this agreement, Grantor and Grantee agree as follows:

1. **GRANT OF OPTION.** GRANTOR hereby grants to GRANTEE an option (the "Option"), for the period and upon and subject to the terms and conditions contained in this Agreement, to acquire an easement over and across Grantor's lands in Roxbury, Maine, generally set forth on **Exhibit A** for the purpose of preparing, laying, constructing, maintaining, operating, altering, improving and repairing transmission lines in a single transmission corridor extending across the Grantee's property in Roxbury, Maine (the "Transmission Corridor Easement" or "Easement").

Land owned by Grantor to be encumbered by the Easement contemplated herein and as identified on the attached **Exhibit A** (hereinafter referred to as "Encumbered Lands") shall be contained within a corridor of land not to exceed one hundred (100) feet in width.

Except as otherwise specifically set forth in this Agreement or as agreed to by the parties, conveyance of the Easement on exercise of the Option shall be on substantially the terms and conditions set forth in the form of easement attached as **Exhibit B** to this Agreement permitting GRANTEE to construct, install, access and operate the Transmission Corridor Easement on and across the Encumbered Lands on the terms and conditions set forth therein. The parties hereby acknowledge that the Easement may be relocated if required by the Project Permits (as hereinafter defined) or engineering requirements, as reasonably determined by GRANTEE, provided that any such relocation must be designated by GRANTEE prior to conveyance of the Easement and further provided that any such relocation must be reasonably acceptable to GRANTOR.

The location of the Easement contemplated herein shall be depicted on plans and by metes and bounds descriptions prepared by GRANTEE and reasonably acceptable to GRANTOR. Such survey plans and descriptions shall be provided by GRANTEE to GRANTOR not later than the delivery of the Exercise Notice as defined below.

2. **OPTION**

a. **OPTION TERM.** The term of the Option shall be for a period commencing on the Effective Date and expiring upon June 30, 2010 (the "Option Term"). If GRANTEE fails to exercise the Option within the Option Term, which exercise shall be by written notice in the manner set forth hereafter, GRANTEE's right in the option shall be null, void, and of no further force and effect, and this Agreement shall expire.

b. **DEPOSIT.** Concurrent with the execution hereof, Grantee shall deliver the sum of FIVE HUNDRED AND 00/100 DOLLARS (\$500.00) (the "Deposit") to Grantor. Unless by the expiration of the Option Term, Grantee elects to terminate this Agreement, the Deposit shall be non-refundable as provided

{EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 }

1

Bradbury to Record Hill Wind LLC

Roxbury, ME

Option to Acquire Easement

herein. If and when Closing occurs, the Deposit shall be attributable to the Easement Acquisition Price (as defined in Section 3).

3. **EASEMENT ACQUISITION PRICE.** At Closing, GRANTEE agrees to pay to the GRANTOR Thirteen Thousand Five Hundred Dollars (\$13,500.00), with the Deposit payment made pursuant to Paragraph 2.b. being applied in full towards the same (the "Easement Acquisition Price").

All amounts due to GRANTOR hereunder shall be disbursed and payable in accordance with written instructions from GRANTOR.

GRANTOR acknowledges and agrees that the sums payable to it under this Paragraph shall, except as otherwise provided in this Agreement or the Easement, constitute full payment for (i) GRANTEE's normal and customary use of the roads and areas as permitted by the Transmission Corridor Easement, and ordinary wear and tear associated therewith, up to and including the date of the grant of the Transmission Corridor Easement, and (ii) the Transmission Corridor Easement, provided, however, that GRANTEE shall remain liable to GRANTOR and others for maintenance and repairs to such roads and areas or other land or property, other than ordinary wear and tear, caused by such use by GRANTEE. The Parties acknowledge that GRANTOR's receipt of the Easement Acquisition Price shall be in consideration of GRANTOR's satisfaction of all of its obligations hereunder, including delivery of the Transmission Corridor Easement to GRANTEE. Notwithstanding anything to the contrary herein, GRANTEE shall be responsible for any penalties arising from withdrawal of any portion of the Encumbered Lands or any other lands of GRANTOR classified under the Maine Tree Growth Tax Law or any similar tax classification arising from this Option Agreement, any clearing contemplated herein, any request by GRANTEE that such properties be removed as provided below, or the terms and conditions of the Transmission Corridor Easement. This obligation shall survive termination of this Agreement. Promptly upon GRANTOR's receipt of GRANTEE's Exercise Notice (as that term is defined below), but only in the event GRANTEE specifically requests GRANTOR to do so, GRANTOR shall request that the municipality withdraw from such classification any portion of the Transmission Corridor Easement that is classified under the Maine Tree Growth Tax Law or any similar tax classification. The Parties further acknowledge that at Closing (as defined herein), GRANTEE must withhold from the total consideration paid for the Easement the amount required pursuant to 36 M.R.S.A. §5250-A, unless GRANTOR provides prior to Closing an exemption or reduction certificate from the State of Maine.

4. **OPTION EXERCISE.** The Option shall be exercised by delivering written notice from GRANTEE to GRANTOR before the expiration of the Option Term ("Exercise Notice"). The Exercise Notice shall affirmatively state that the GRANTEE exercises the Option without condition or qualification. Upon delivery of the Exercise Notice, GRANTEE shall become obligated to acquire and GRANTOR shall become obligated to grant the Easement pursuant to the terms of this Agreement and the Transmission Corridor Easement. Within thirty (30) business days after exercise of the Option, GRANTEE shall pay to GRANTOR the Easement Acquisition Price, in immediately available funds, and the parties shall execute and deliver the Transmission Corridor Easement at a closing (the "Closing") at a location in the State of Maine established by mutual agreement between Grantor and Grantee.

5. **AUTHORITY.** The persons executing this Agreement hereby warrant and represent that they are duly authorized to bind themselves or their respective corporation to its terms. Each party shall, upon request of the other party, provide such other evidence of authority as may be reasonably required by the requesting party.

{EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 }

6. **RIGHT OF ENTRY.** During the term of this Agreement, GRANTEE and its contractors and agents shall have the right to enter the Encumbered Lands, at any time and from time to time, for the purposes of inspection, survey work, engineering tests, and/or other testing. GRANTEE agrees to indemnify and hold harmless GRANTOR from any and all liability, costs, harm, damages, expenses and claims incurred by or made against GRANTOR for injury to person(s) or damage to property resulting from the exercise by or on behalf of GRANTEE of such right of entry. If GRANTEE does not exercise the Option hereunder and acquire the Easement, GRANTEE further agrees to repair any and all damage to the Encumbered Lands caused by such entry. At all times during, and upon the completion of, such inspections, survey work, engineering tests, and/or other testing hereunder, GRANTEE shall undertake appropriate measures to prevent the sedimentation of water courses and soil erosion. In the event of a dispute between the parties as to any repairs required hereunder and if the parties cannot resolve the dispute through unassisted consultation between themselves, the parties may pursue remedies available at law and in equity. The obligations of this section shall survive termination of this Agreement.

7. **TITLE EXAMINATION AND DEFECTS.** GRANTOR shall upon execution of this Agreement, provide to GRANTEE copies of any and all title information related to Grantor's property in Roxbury in GRANTOR's possession, including but not limited to access agreements, relevant portions of existing title policies, copies of any other encumbrances upon the property and other title information. GRANTEE may at its own expense obtain a title examination of the property, and provide notification to GRANTOR of those encumbrances which are unacceptable (the "Unacceptable Title Encumbrances") on or before delivery of any Exercise Notice and which GRANTEE may request to be removed on or before the Closing. Thereafter, GRANTOR shall use reasonable efforts to remove the Unacceptable Title Encumbrances by the Closing. In the event GRANTOR is unable or unwilling to remove any Unacceptable Title Encumbrances, GRANTEE may elect either (1) to terminate this Agreement, in which case the Agreement shall be of no further force of effect and neither party shall have any further liability to the other, except that GRANTOR shall return the deposit to the GRANTEE, or (2) to proceed with the purchase of the property, paying therefore the Easement Acquisition Price. In any event, GRANTOR shall satisfy and discharge all monetary liens and encumbrances (except any statutory liens for non-delinquent real property taxes) which materially affect the property. To enable GRANTOR to make conveyance as herein provided GRANTOR may, at the time of recording of the easement deed, use the purchase money or any portion thereof to clear the title and GRANTOR shall furnish whatever documents or evidence will be reasonably required by the title insurance company in order to delete the standard exceptions, other than survey exceptions, and monetary liens or encumbrances on or before the Closing.

8. **MEMORANDUM OF OPTION.** Recording of this Agreement is prohibited except as allowed in this paragraph. Promptly upon Grantee's delivery of a written request for the same, GRANTOR shall execute and deliver to GRANTEE a memorandum of option substantially in the form of **Exhibit C**.

9. **MISCELLANEOUS.**

(a) **Execution by Both Parties.** This Agreement shall not become effective and binding until fully executed by GRANTEE, GRANTOR and Farm Credit of Maine, ACA. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. For purposes of this Agreement, a facsimile signature shall be deemed an original.

(b) **Notice.** All notices, claims, certificates, requests, demands and other communications required or permitted to be delivered hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed by overnight, registered or certified mail, postage prepaid, return

{EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 }

receipt requested, at the following addresses or to such other address as the person to whom notice is to be given may have previously furnished to the other in writing in the manner set forth above: (i) if to GRANTOR: 15 Serenity Lane, Peru, Maine 04290; and (ii) if to GRANTEE: Record Hill Wind LLC, c/o Wagner Wind Energy I, LLC, P.O. Box 160, 150 Orford Road, Lyme, New Hampshire 03768. Each party hereto shall keep the other party advised of its current mailing address.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine without regard to conflicts of law principles.

(d) Successors and Assigns. This Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against the parties hereto and their respective heirs, successors, and or assigns, to the extent as if specified at length throughout this Agreement. GRANTEE may not assign this Agreement without the prior written consent of GRANTOR, which consent shall not be unreasonably withheld.

(e) Time. Time is of the essence under this Agreement.

(f) Headings. The headings inserted at the beginning of each paragraph and/or subparagraph are for convenience of reference only and shall not limit or otherwise affect or be used in the construction of any terms or provisions hereof.

(g) Cost of this Agreement. Any cost and/or fees incurred by the GRANTEE or GRANTOR in preparing and executing this Agreement shall be borne by the respective party incurring such cost and/or fee, other than as provided herein.

(h) Entire Agreement. This Agreement contains all of the terms, promises, covenants, conditions and representations made or entered into by or between GRANTOR and GRANTEE and supersedes all prior discussions and agreements whether written or oral between GRANTOR and GRANTEE with respect to the Option and all other matters contained herein and constitutes the sole and entire agreement between GRANTOR and GRANTEE with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and executed by both GRANTOR and GRANTEE with the formalities hereof.

{SIGNATURES APPEAR ON THE FOLLOWING PAGE.}

{EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 } {EP - 00535476 - v2 }

1310

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of  
July 23, 2009.

Witness:

Robert C. Heinrich

GRANTOR:

Clinton G. Bradbury  
Clinton G. Bradbury

GRANTEE: Record Hill Wind LLC

By: Robert Gardiner  
Robert Gardiner  
President

Farm Credit of Maine, ACA, a federal instrumentality organized and existing under the laws of the United States under the Farm Credit Act of 1971, as amended, holder of a mortgage on the lands encumbered by the foregoing Option and easement contemplated herein by virtue of that certain mortgage deed from Grantor dated September 28, 2006, and recorded in the Oxford County Registry of Deeds in Book 4018, Page 246, joins in this instrument for the purpose of consenting to the grant of the rights and privileges set forth herein and further hereby agrees that said mortgage shall be subordinate to any such easement acquired by Grantee as contemplated herein.

Farm Credit of Maine, ACA

Clinton G. Bradbury

By: Robert C. Heinrich  
Name: Robert C. Heinrich  
Title: Vice President

{EP - 00535476 - v2 ; {EP - 00535476 - v2 ; {EP - 00535476 - v2 ; {EP - 00535476 - v2 ; {EP - 00535476 - v2 ; {EP - 00535476 - v2 ;

5

Bradbury to Record Hill Wind LLC

Roxbury, ME

Option to Acquire Easement

**Record Hill Wind LLC  
Brunswick, Maine**

James Cassida  
Department of Environmental Protection  
Augusta, ME

August 6, 2009

Re: Explanation of Neighboring Record Hill Wind Project and Central Maine Power  
Section 59 Upgrade Project; application number: L-24441-24-A-N/L-24441-TF-  
B-N

---

Dear Jim,

As you know, Record Hill Wind LLC has proposed to develop a utility-scale wind energy development along the Record Hill ridgeline in Roxbury, Maine (Project). The Project anticipates generating up to 127,000,000 kilowatt hours of clean energy each year. This clean power needs to be delivered to the market, of course, and to deliver such a considerable amount of green energy to the region, some upgrade to the electric grid is necessary. This happens with all large scale generating projects whatever their fuel source.

FERC requires that any project which proposes to interconnect with the regional grid undergo a system impact study of the impact the new power will have on the regional electrical grid system. If a study shows that an upgrade is required, the project has to agree to reimburse some portion of those costs. In the case of Record Hill its impact will require some upgrade to the CMP grid, and the parties will be entering into a FERC dictated standard interconnection agreement. That an upgrade to the transmission system is necessary is not unique to this energy development. Almost all large energy projects built in Maine-- whether they be gas fired, biomass, hydro or wind-- have some influence on the utilities' system and to our understanding, in all previous cases the utility has had its upgrade project considered separately by the DEP or LURC where permitting was required. Because of the FERC mandated process, the utility must be the entity which controls the upgrade after its completion.

We understand that an issue has been raised as to whether these two projects should be permitting in one proceeding. We do not think this is the correct interpretation of your regulations as applied to the facts at hand. The utility upgrade and our wind project are simply not within the scope of a "common scheme of development" in the Site Location of Development regulations if that is the assertion. An assertion that any transmission

upgrade being undertaken to facilitate interconnection to the grid of a new generator is part of the common scheme of the generation project is inconsistent with all past DEP practice with which we and our advisors are familiar, and setting the precedent here could arguably raise questions as to whether prior permitting was legally done for many past projects-- not only for energy projects but also many others such as street widening, sewer upgrades etc. which often occur and are carried out by third parties in conjunction with Site Location projects. We believe such an assertion is simply unjustified by the facts and the law, and we urge the Department to reject it.

To meet the definition found in Chapter 371 (1) (C) of "Common Scheme of Development" the two or more projects must not only take place on "contiguous or non-contiguous parcels or lots in the same immediate vicinity," (which clearly the Record Hill project and CMP upgrade will) but also the projects must

"Exhibit[s] characteristics of a unified approach, method, or effect such as:

- (a) unified ownership, management, or supervision;
- (b) sharing of common equipment or labor; or
- (c) common financing."

The examples given of a unified approach are simply lacking in the case before you as we discuss in some detail below. Furthermore, the purpose of the "common scheme of development" theory as we understand it is to ensure that a potential applicant is not dividing projects into segments small enough to slip below the Site Location review threshold. Common scheme of development is only defined within the Site Location rules in order to broaden the definitions of "parcel of land" and "person" to capture projects under Site Law review which might otherwise not require a state permit. Specifically, in calculating the aggregate land area of a parcel of land to determine whether a development must undergo Site Location review, the common scheme of development concept is applied to ensure that no development evades review simply because it is not on contiguous parcels, or the parcel was previously divided into separate lots. Moreover, the concept is applied to clarify that multiple persons may be regarded as one "person" where their individual developments would not meet the threshold for applying Site Location, but put together, the project would trigger Site Location review. There is no other context in which the common scheme of development has applicability, nor is there any other context in which "common scheme of development" is referenced in the Site Location statutes or rules. Indeed, the term is not contained in the statutes.

Here, there is no attempt to evade Site Location review. Neither project has been falsely reduced in size so as to fall below the threshold for DEP jurisdiction over the project, as evidenced by the two applications for Site Location permits currently pending with the DEP. Where separate entities propose projects on parcels of land which each have sufficient aggregate land area to trigger Site Location review, the common scheme of development principle is simply inapplicable. It may be helpful to note that the DEP considers the cumulative impacts of every development which is proposed; this has never, nor does it now, require that all development contemplated in a particular area be proposed and considered by DEP at the same time as part of one application.

Turning to the requirements for something to qualify under the common scheme definition, it is clear that these projects do not meet the definitions. By way of background, the Project is located in a part of the State that offers a unique combination of attributes that are attractive for wind energy development. More specifically, the Record Hill ridgeline presents a location where strong wind characteristics meets robust electrical infrastructure. An existing Central Maine Power-owned (CMP) electric distribution line—referred to as “Section 59”—passes directly through the Project area. As we demonstrated in our initial joint Site Location of Development Act/Natural Resources Protection Act filing, CMP was already investigating an upgrade to that line when the Record Hill Wind Project was conceived (see Appendix 1-1 of our initial application). This is significant since conceptualization of the projects at different times by different parties has been held by the Maine courts (albeit in another context) to be indicia that there is **no** common scheme of development. See Chase v. Burrell 474 A.2d 180 (Me.1984). Development of the Record Hill Project now demands that this CMP line be upgraded in the near term to ensure full power delivery capacity. The transmission line upgrade is only accelerated by the project but had its own independent genesis.

The development of the Record Hill Wind Project and CMP’s upgrade to Section 59 are separate and distinct projects. Both projects are separately seeking Natural Resource Protection Act and Site Location of Development Act permits from the Maine Department of Environmental Protection (MDEP or Department). The projects have applied for these licenses separately due to the fact that the projects are going to be owned, maintained, and supervised by **separate** entities with **different** (and often competing) interests; will contract for equipment and labor **separately**; and will be financed by **different** methodologies. They clearly fall outside of the definition found in Chapter 371 as they are under separate rather than unified ownership, management and supervision, under separate procurement of equipment and labor, and under independent financing.

Record Hill Wind LLC is a private entity which does not include CMP or any affiliate or subsidiary of CMP. Record Hill Wind will own and maintain the Project. Record Hill Wind also will supervise and ultimately be responsible for all work conducted at the Project. Record Hill Wind has offered a bid package to three qualified construction firms with the skills and experience to complete construction of the Project from the permit stage through completion, including final design, purchase, construction, oversight, and activation for access road construction, turbine transportation, turbine erection, electrical connection system installation, generator lead lines, and collector substation. These are all the elements of Record Hill Wind’s application and none of the elements of CMP’s application. Bid packages for this work have been sent out by Record Hill, and its contractor will be selected shortly.

On the other hand, CMP is a utility entity that is heavily regulated by the PUC by FERC and by the New England ISO. Activities of CMP involving construction and upgrades to its transmission facilities are subject to review and approval by the PUC and regulated by both FERC and ISO-New England. Thus for a number of reasons—including existing law, corporate purposes and charters, safety, maintenance and reliability—the Section 59

upgrade will be owned, maintained, and supervised by CMP. Construction of the line upgrade will be bid and contracted separately from work being conducted at Record Hill Wind. In short all construction and design of CMP's project is being handled separately by CMP using different contractors. The CMP facilities will all be separately owned and operated by CMP.

In Order 2003-C issued on June 16, 2005 (111 FERC ¶ 61,401) the FERC determined how large generating projects such as Record Hill will interconnect into the local utility's system and how any required network upgrades will be paid for. In essence there is a system impact study which is carried out and an estimate of costs for any upgrade required is undertaken. To the extent the utility undertakes construction of the upgrade, it is paid by the generator such as Record Hill based on an estimate of the costs the generator's use is creating and the actual costs it incurs. In essence CMP is able to reimburse itself for its costs out of the funds Record Hill makes available. Record Hill acquires credits for use of the upgraded line based upon its payment. There is no common financing of the costs of the wind project and the CMP upgrade. Record Hill will borrow money needed for its project and for the upgrade, and will then under the FERC mandated rules pay CMP the cost to build the upgrade in the form of an advance usage charge. CMP has no financing to undertake since it has a regulatory source of funding under the FERC rule, that is, the use payments which Record Hill advances. The money paid by Record Hill to CMP is more akin to entering into a contract with a third party service provider than a common financing scheme.

As you know, the Record Hill Wind Project and the Section 59 project converge on what is called the Haseltine parcel along Route 120 in Roxbury. That site will host the Project collector substation, the Project operations and maintenance building, and the new CMP Roxbury substation. In short, this is the location at which power transfers from Record Hill Wind to the CMP system and consequently the ISO-New England grid. To be clear, ownership, maintenance, and supervision of the different aspects of development on this parcel will be separate.

Record Hill Wind LLC holds title to the Haseltine parcel. Record Hill Wind and CMP have a Memorandum of Agreement between the parties that binds CMP to acquire the portion of the parcel necessary for their development prior to beginning construction. For numerous safety and reliability reasons, all maintenance of the CMP Roxbury substation will be the responsibility of CMP.

The one portion of development where CMP and Record Hill Wind worked directly in cooperation was in the design of the stormwater management plan for the Haseltine site. Because the Record Hill Wind and CMP developments on Haseltine both add impervious area and involve considerable earthwork, an effective and comprehensive stormwater plan is necessary. Recognizing the relatively proximate locations of the substations and operations and maintenance building, the two entities understood that a single stormwater

plan was the logical approach to take and, significantly, the DEP staff agreed to this approach. Two different plans would have resulted in duplicate management efforts and likely would have involved inefficient control of stormwater. Because the site plans call for tight spacing of sub-stations, access roads and buildings, we have agreed with CMP that a single contractor (arranged for by Record Hill Wind) will prepare the entire site to “sub-grade” standards for both projects, taking some cut material off the CMP substation site and using it as fill for Record Hill’s operations and maintenance building site immediately adjacent. This will allow less overall environmental impact and simplify earth-moving in a congested area. Long-term maintenance of the stormwater plan for the parcel will be divided between the entities as well. Generally speaking CMP will be responsible for ensuring that controls located on land they own are properly operating. Record Hill Wind will be responsible for the controls on property owned by the wind project. Certainly this minor cooperation would not and should not raise this to the level of a common scheme of development as envisioned by the regulation. If it did, then on many future projects parties would refuse to cooperate on their separate activities for fear of being roped together into common permitting. This would be counterproductive to the most efficient way of undertaking many activities and would likely increase the environmental impact, not reduce it.

Record Hill also points to the recent action of the Maine Legislature to grant certain wind projects accelerated and other special Site Location of Development consideration for their permits. Title 35-A Chapter 34-A Expedited Permitting of Grid-Scale Wind Energy Development, sets forth a new process under which the Department must permit Record Hill and other large wind projects. The Legislature was very clear in defining exactly what activity received the benefit of the statute and what would not. It carefully defined “Generating Facilities” to include wind turbines and towers and the transmission lines “immediately associated with the wind turbines” (not including generator lead lines) (35-A MRSA § 3451 (5)), and also defined “Associated Facilities” as including the generator lead lines, access roads and substations (35-A MRSA § 3451 (1)). It is these two Facilities which make up a Wind Energy Development (35-A MRSA § 3451 (11) and which get the special permitting process.

What the Legislature clearly excluded from the statute passed just this year, are facilities owned by someone other than the wind energy developer such as CMP. Its transmission line **cannot** be Generating Facilities since the CMP transmission line is not “immediately associated with the wind turbines”, but rather runs from the substation, and it is **not** Associated Facilities since it is not a generator lead. The latter is a term of art which refers to the line which connects the generator to the transmission system of the transmission and distribution utility. (For a variant of this see Generator Interconnection Transmission Facility defined by the Legislature in 35-A MRSA § 3132 (1-B)). Were the Department to classify the CMP transmission upgrade project and the Record Hill project as a “common scheme of development” or otherwise require that they be permitted in a common process, it would defeat the very intent of the Legislature in passing Title 35-A Chapter 34-A. Every wind project would then be held up because the utility upgrade would not be entitled to the special wind energy development process and

all large wind projects would then lose the special benefits the Legislature vested to them just this year.

In summary, these two distinct projects are not part of a common scheme of development. This isn't an instance like the stereotypical subdivision developer adding two house lots per year in an effort to avoid triggering the Site Location of Development Act. That was the policy behind the definition of a common scheme of development. Here there is no "scheme" – no nefarious intent. On the contrary, Record Hill Wind LLC and Central Maine Power have taken all steps to separately apply for and meet the standards of a Site Location of Development Act permit. They both will be judged under those standards and neither will escape regulation. In addition, the Department should not now stray from its long established precedent of treating generators and system upgrades as separate applications. Finally, the Department should not by a new interpretation of its own regulations defeat the crystal clear intent of the Legislature in the new statute designed to streamline wind project permitting.

We would be happy to submit any additional material not already part of our and CMP's applications which demonstrate the facts set out above if you request. To the extent you need to rely upon material in the CMP file in reaching your decision on this issue we request such material which is in the CMP application file be made a part of our record. We believe your files and the information in this letter contain ample support for reaching the conclusion that these projects are separate and distinct and not part of a common scheme of development as defined in Chapter 371. They should continue to be processed separately.

Sincerely yours,

Robert Gardiner  
President